Supreme Court, U. S.
FILED
SEP 8 1975
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1409

LONNIE NORTH,

Appellant,

v.

C. B. RUSSELL, *et al.*,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF KENTUCKY

BRIEF OF AMICUS CURIAE NEW YORK STATE ASSOCIATION OF MAGISTRATES

Eugene W. Salisbury, Esq.
Duncan S. MacAffer, Esq.
Attorneys for New York State Association of Magistrates
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

Lawrence A. Schulz, Esq.
of Counsel.

Daily Record Corporation
Rochester, New York

(1377)

Spaulding Law Printing
Syracuse, New York

TABLE OF CONTENTS

	Page
Table of Authorities	*iii*
Interest of Amicus Curiae	1
Questions Presented — 1. Whether nonlawyer judges properly trained, educated and certified by the state are capable of presiding over fundamentally fair criminal proceedings; 2. Whether constitutional questions addressed to the competency of nonlawyer judges should be determined by a *per se* rule of incompetency or in a case by case manner as an integral part of the criminal proceedings; 3. Whether a law school education and admission to the bar in itself qualifies an individual to preside in a criminal court.	3
Statement of Case	4
ARGUMENT	
Point I — Nonlawyer judges, properly trained and certified by the State, are capable of presiding over fundamentally fair criminal proceedings in town and village justice courts.	6
Point II — The New York constitutional and statutory provisions require adequate training and education for the state's nonlawyer justices, and are constitutional on their face and as applied.	15
Presumption of Constitutionality	20
No Denial of Equal Protection of the Law	24
Alternative Forms of Relief	28
Point III — A law school education and admission to the bar do not in themselves qualify an individual to preside in a criminal court.	29

	Page
Conclusion	33
Certificate of Service	34
Appendix A — New York Constitutional and Statutory Provisions	A-1
Appendix B—	
Distribution of Types of Cases in Town and Village Justice Courts, Calendar Year 1973, By County.	B-1
Comparative Cost Analysis if the District Court System were Implemented Statewide in Contrast with Justice Court Costs — 1973 (Excluding Facilities, Equipment and Other Contractual Expenses)	B-3
Comparative Cost Analysis of the Recommendations of the Temporary Commission on the New York State Court System and the Present Justice Court System, "Mandated District Court Counties"	B-5
Comparative Cost Analysis of the Recommendations of the Temporary Commission on the New York State Court System and the Present Justice Court System, "Proposed Town Justice Court Counties"	B-6
Number of Lawyer and Nonlawyer Town and Village Justices in New York State During the Calendar Year 1974, By County	B-8
Appendix C — Survey of States Employing Nonlawyer Justices — Training Programs	C-1

TABLE OF AUTHORITIES

Cases	Page
Joseph W. (*Anonymous*) v. *Burnham*, Onondaga County Index No. 75-1291	2, 6, 7, 8, 28
Argersinger v. *Hamlin*, 407 U.S. 25 (1972)	19, 20, 26
Bartlett v. *Bedient*, A.D.2d , 366 N.Y.S.2d 735 (4th Dept., April 23, 1975)	11
Beck v. *Washington*, 369 U.S. 541 (1962)	20
City of Decatur v. *Kushmer*, 43 Ill.2d 334, 253 N.E.2d 425 (1969)	22
Colten v. *Kentucky*, 407 U.S. 104 (1972)	22
Deck v. *Hammer*, 7 Ariz.App. 466, 440 P.2d 1006 (1968)	22
Ditty v. *Hampton*, 490 S.W.2d 772 (Ky. Ct.App. 1973), *appeal dismissed*, U.S. , 94 S.Ct. 219 (October 15, 1973)	22
Fay v. *New York*, 332 U.S. 261 (1947)	16, 20
Fuentes v. *Shevin*, 407 U.S. 67 (1972)	19
Gordon v. *Justice Court*, 12 Cal.3d 323, 525 P.2d 72 (1974), *cert. denied sub nom. California* v. *Gordon*, 420 U.S. 938 (1975)	23, 24, 25
Graham v. *West Virginia*, 224 U.S. 616 (1911)	20
Heard v. *Moore*, 290 S.W.15 (Tenn. Sup.Ct. 1926)	22
Helfrick v. *Dahlstrom Metalic Door Co.*, 256 N.Y. 199 (1931), *aff'd*, 284 U.S. 594 (1931)	19
In re Murchison, 349 U.S. 133 (1955)	19
In re Storace, 30 A.D.2d 220, 291 N.Y.S.2d 416 (4th Dept. 1968)	23

	Page
Jackman v. *Rosenblaum Co.*, 260 U.S. 22 (1922)	27
Landes v. *Town of North Hempstead*, 20 N.Y.2d 417, 231 N.E.2d 120 (1967)	24
Lindsley v. *National Carbonic Gas Co.*, 220 U.S. 61 (1910)	20
Little v. *State*, 75 Tex. 616, 12 S.W. 965 (1890)	22
McDonald v. *Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969)	20, 21
McGowan v. *Maryland*, 366 U.S. 420 (1961)	20
Missouri v. *Lewis*, 101 U.S. 22 (1879)	20
Mitchell v. *W. T. Grant Co.*, 416 U.S. 600 (1974)	19
New York State Ice Co. v. *Liebmann*, 285 U.S. 262 (1932)	21
People v. *Bonnerwith*, 69 Misc.2d 516, 330 N.Y.S.2d 248 (Justice Ct., Town of Rhinebeck, Dutchess Co., 1972)	28
People v. *Felberbaum*, 9 N.Y.2d 213, 173 N.E.2d 783 (1961)	16
People of the State of New York v. *Wood*, 252 F.Supp. 270 (S.D.N.Y. 1966)	22
Powell v. *Alabama*, 287 U.S. 45 (1932)	19
Salsburg v. *Maryland*, 346 U.S. 545 (1954)	15, 20
San Antonio Independent School District v. *Rodriguez*, 411 U.S. 1 (1973)	20, 21, 22
Sanchez v. *Tonkin*, Monroe County Index No. 75-8395	2, 8, 10, 11, 13, 28
Schilb v. *Kuebel*, 404 U.S. 357 (1971)	20

	Page
Shadwick v. *City of Tampa*, 407 U.S. 345 (1972)	17
Shapiro v. *Thompson*, 394 U.S. 618 (1969)	25
Snyder v. *Massachusetts*, 291 U.S. 97 (1934)	20
State ex rel. Sellers v. *Parker*, 87 Fla. 181, 100 So. 260 (1924)	22
State University of New York v. *Denton*, 35 A.D.2d 176, 316 N.Y.S.2d 297 (4th Dept. 1970)	19
Taylor v. *Louisiana*, U.S. , 95 S.Ct. 692 (1975)	16
Ward v. *Village of Monroeville*, 409 U.S. 57 (1972)	20
Wyse v. *Johnson*, Steuben Co. Index No. 74-34986	2, 7, 8, 16, 28

New York Constitutional and Statutory Provisions

N. Y. Const., art. 6, §20(a)	23
N. Y. Const., art. 6, §20(c)	15
N. Y. Const., art. 6, §28	6
Criminal Procedure Law, §1.20(39)	15
Criminal Procedure Law, art. 60	30
Criminal Procedure Law, §120.10	17
Criminal Procedure Law, §170.15(3) (a)	28
Criminal Procedure Law, §170.55	9
Criminal Procedure Law, §180.20(2)	9
Criminal Procedure Law, §180.50(3) (iii)	9
Criminal Procedure Law, §180.60(8)	18
Criminal Procedure Law, §450.10	14, 28

	Page
Criminal Procedure Law, §460.50(2) (d)	28
Criminal Procedure Law, §690.35	17
Criminal Procedure Law, §690.45	17
22 NYCRR §30.6(a) and (b)	6
Penal Law, §240.25(5)	8
Public Officers Law, §3(1)	24
Town Law, §23	24
Town Law, §31	15
Uniform Justice Court Act, §105(a)	15
Uniform Justice Court Act, §2021	28
Village Law, §3-300(2)	24
Village Law, former §4-416	15

Miscellaneous

	Page
Michael J. Brown, *Search and Seizure Manual* (Buffalo, 1975)	12
E. Gardner Brownlee, *Objections to Evidence* (National College of the State Judiciary, 1974)	12
Chief Justice Warren E. Burger, *Annual Report on the State of the Judiciary*, American Bar Association Mid-Winter Meeting, February 23, 1975	32
Hall and Kamisar, *Modern Criminal Procedure* (West, 1966)	31
Inbau and Sowle, *Cases and Comments on Criminal Justice* (Foundation Press, 1964)	30

	Page
Eugene W. Salisbury, *Manual of Procedure for Town and Village Courts of New York State* (Binghamton, 1974)	12
Sullivan and Hardin, *Evidence, Cases and Materials* (Foundation Press, 1968)	30
Temporary Commission on the New York State Court System, . . . *And Justice For All* (January, 1973)	27
The New York Times, Sunday, December 10, 1972	32

In The

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1409

LONNIE NORTH,

Appellant,

v.

C. B. RUSSELL, *et al.*,

Appellees.

ON APPEAL FROM THE
COURT OF APPEALS OF KENTUCKY

BRIEF OF AMICUS CURIAE NEW YORK STATE ASSOCIATION OF MAGISTRATES

Interest of Amicus Curiae

This Court, largely on the basis of a record involving a wholly untutored nonlawyer judge, has been asked to indict literally thousands of hard working and competent nonlawyer judges throughout the nation. In addition, the Court is asked to sign the death warrant for a substantial portion of our judicial system, founded upon the rock of history and tempered by the demands of our present day criminal justice system. In some states, perhaps, rapid progress should be required in terms of training

and educating nonlawyers to more knowledgeably preside over proceedings involving petty criminal and traffic offenses. However, as we shall demonstrate, adequately trained and educated nonlawyers are perfectly capable of presiding in such proceedings.

This amicus curiae brief is filed on behalf of the New York State Association of Magistrates upon the consent of the attorneys for the respective parties in this appeal.[1] The Association of Magistrates' membership exceeds 2,000 and includes most of the incumbent town and village nonlawyer justices in the State of New York. The Association has intervened in three lawsuits initiated in the New York Supreme Court in which judgments were or are being sought declaring invalid the state constitutional and statutory provisions which authorize nonlawyers to preside in town and village justice courts.[2] One of those suits resulted in a judgment upholding the state laws.[3] The other lawsuits have been stayed pending an authoritative appellate determination.[4]

The question presented in the New York lawsuits is whether a criminal defendant's rights to counsel, due process and equal protection of the law are violated *per se* where a presiding town or village justice is not a lawyer and a jail sentence may be imposed upon conviction. The question presented in this appeal, however, is whether the individual nonlawyer judge is sufficiently educated, trained and experienced to preside over

[1] Letters of consent have been filed with the Clerk of the Court.

[2] *See* Appendix A, *infra*, where we have set forth the relevant New York provisions of law.

[3] *Joseph W.* (*Anonymous*) v. *Burnham*, Onondaga County Index No. 75-1291.

[4] *Wyse* v. *Johnson*, Steuben County Index No. 74-34986, and *Sanchez* v. *Tonkin*, Monroe County Index No. 75-8395.

fundamentally fair criminal proceedings (7-8).[5] As with lawyer judges, the competency of trained and certified nonlawyer judges should be ascertained on a case by case basis when that competency is challenged.

The interest of the New York State Association of Magistrates, therefore, lies in educating this Court on the superior quality of justice dispensed by properly educated and trained nonlawyer judges in local courts. Toward that end, we hope to avert a decision in this case which would indiscriminately entomb nonlawyer judgeships regardless of effective state supervised training programs.

Questions Presented

1. Whether nonlawyer judges properly trained, educated and certified by the state are capable of presiding over fundamentally fair criminal proceedings.

2. Whether constitutional questions addressed to the competency of nonlawyer judges should be determined by a *per se* rule of incompetency or in a case by case manner as an integral part of the criminal proceedings.

3. Whether a law school education and admission to the bar in itself qualifies an individual to preside in a criminal court.

[5] Numbers in parentheses refer to the Appendix filed by the appellant North. *Cf.* Brief of Amicus Curiae Kentucky Bar Association at 8.

Statement of Case

On July 10, 1974 Lonnie North was detained by a City of Lynch police officer pursuant to an arrest warrant issued in Cumberland City, Kentucky (34). North was charged in Cumberland with reckless driving. He apparently plead guilty and paid a fine (34).

Upon his return to Lynch, which is a fifth class city in Kentucky, North was held on another arrest warrant. The Lynch warrant was in connection with a charge of driving while intoxicated (25, 43, 45). He was taken before the appellee, C. B. Russell, Judge of the City Court of Lynch, and informed of the charge against him (45). There exists a fact question as to whether Judge Russell advised North of his rights to counsel, to confront his accusers and to introduce evidence on his own behalf (32, 37, 38-39, 45-46).[6]

Judge Russell was initially disposed to give North a jury trial (36). However, after consulting with the city attorney, who was stipulated to be a competent practicing attorney and a member of the Kentucky Bar Association (31), Judge Russell advised North that there would be no jury trial (32, 37). Sworn testimony had been previously taken from the complaining police officer, and North had been given an opportunity to cross examine the officer (27). The court had before it the results from a breathelizer test given to North (24).

North was not represented by a lawyer, despite the probability that Judge Russell advised him of his right to counsel (32). Moreover, it cannot be seriously disputed that North was given an opportunity to examine the only prosecution witness (27). North freely admitted that he had no witnesses to produce on his own behalf (42). Further, one of North's own witnesses at this habeas corpus proceeding, who had been present during the proceedings before Judge Russell, testified that Judge Russell gave North an opportunity to explain his side of the case (43). There is no record evidence that North was

[6]This factual issue was not resolved by the state courts due to the nature of the claim advanced by North in this habeas corpus proceeding (66).

affirmatively denied the opportunity to present his case; he simply chose not to advance any defense other than his not guilty plea (41). Although the testimony was obviously evasive, there is reason to believe North and his brother-in-law, Terry Creech, had both been in court for similar charges on several occasions (48-50).

Concededly, these proceedings were rough hewn in the realm of preserving constitutional rights. What the record discloses, however, is that elements of basic fairness did exist in Judge Russell's courtroom. The allegations in this habeas corpus proceeding, which has supplanted a direct appeal and a trial *de novo* in the Kentucky court system, are essentially negative. Thus, North alleges that Judge Russell did not advise him of his constitutional rights. However, with the possible exception of preserving North's right to a jury trial, the record discloses no affirmative violation of North's constitutional rights.

The problem with which the Court must cope in this case is whether a nonlawyer judge may be permitted, as was Judge Russell, to preside over criminal proceedings without any training or education by the state. Unlike Kentucky, which apparently furnishes no such training, New York, and a vast majority of the other states employing nonlawyer judges, maintain demanding training programs for nonlawyer judges who preside in town and village justice courts or their equivalent.[7]

The Kentucky situation, which is mitigated by the availability of a trial *de novo* before a lawyer judge, is not typical of the majority of the states which have retained the nonlawyer segments of their judiciary. This amicus brief is submitted to assist the Court in ascertaining the positive aspects of a properly trained nonlawyer judiciary in the local courts.

[7]In Appendix C, *infra*, we have presented the results of an August, 1975 telephone survey conducted by counsel for this amicus curiae which sets forth to the extent possible a review of the various training programs maintained by the states employing nowlawyer judges in their lowest level courts.

ARGUMENT

POINT I

Nonlawyer judges, properly trained and certified by the State, are capable of presiding over fundamentally fair criminal proceedings in town and village justice courts.

For a number of years, New York has administered comprehensive mandatory courses of training and education for its nonlawyer justices in town and village courts.[8] The result has been a successful merger of proper training and free election of nonlawyers to serve as judges in New York's 1,500 towns and villages.[9] Illustrative of the competent manner in which these judges conduct criminal proceedings are the few reversals of their judgments by New York's appellate courts. More particularly, the records of the three major lawsuits brought in New York seeking to invalidate New York's constitutional and statutory provisions for nonlawyer justices argue forcefully in favor of the New York system.

In *Joseph W. (Anonymous)* v. *Burnham*,[10] a sixteen-year-old youth was charged with the misdemeanor of driving while intoxicated and two traffic infractions. He was accorded every basic constitutional and statutory right in impeccable

[8]These courses are administered by the Administrative Board of New York's Judicial Conference, the body charged with the administration of all the state courts in New York. *See* N.Y. Const., art. 6, §28; 22 NYCRR §30.6(a) and (b).

[9]There are 430 lawyer judges who preside in New York justice courts, generally in the more populous towns and villages. *See* Appendix B at B-1, B-2, *infra*.

[10]Onondaga County Supreme Court, Index No. 75-1291.

proceedings before a nonlawyer town justice.[11] It is undisputed that the plaintiff in the *Burnham* case appeared for arraignment, was advised of his right to counsel at all stages of the proceedings, and was in fact assigned a lawyer.

The youth and his lawyer subsequently appeared before Justice Burnham in chambers. He was arraigned with counsel and advised that under New York law he might be eligible for youthful offender treatment. Advised by his counsel to plead guilty, the boy was adjudged a youthful offender and sentenced to three years probation. The declaratory judgment action he had brought to challenge the validity of New York's laws authorizing nonlawyer justices resulted in a judgment upholding those provisions.

In *Wyse* v. *Johnson*[12] the petitioner Wyse was charged in a village court with harassment. Wyse assertedly followed his landlord into the village and accosted him in a corridor of a hospital at which the landlord worked. In front of several witnesses, Wyse threatened to kill the landlord and to destroy

[11]Justice Helen Burnham served for nine years as the court clerk while her husband, an attorney, presided in the town justice court. Upon his death, Justice Burnham was first appointed to fill the vacant judgeship and then elected in her own right. A state-licensed real estate broker for many years, Mrs. Burnham began her professional life by attending a business college and later took a legal secretarial course. She was employed for years as a legal secretary. In 1971 she attended the basic training course administered by the Administrative Board of New York's Judicial Conference. She passed the examination prepared by Board attorneys and was certified. She also attended a special seminar in 1971 geared to the Criminal Procedure Law which became effective in New York on September 1, 1971. Mrs. Burnham then attended and successfully completed the advanced training course required by the Administrative Board. She regularly returns for refresher courses.

[12]Steuben County Supreme Court, Index No. 74-34986.

his property.[13] Two days later, Wyse was arraigned on an information by the now retired nonlawyer Justice Leon Hopkins.[14] Wyse was advised of his rights and given an adjournment of one week to obtain a lawyer. Due to the severity of the allegations, and the fact that Wyse no longer had any significant ties to the community, Justice Hopkins set bail at $50. Before the next appearance date, Wyse had obtained the services of the Greater Up-State Legal Project, a publicly funded legal aid program.[15]

In *Sanchez* v. *Tonkin*[16] Sanchez was charged in a Steuben County town court with felonious criminal mischief, later reduced to a misdemeanor. Sanchez literally destroyed the property he had rented from the complainant with an ax and a machete. He was arrested and arraigned on Tuesday, May 6th,

[13]Contrary to the suggestion in the amicus curiae brief filed in this appeal by the Greater Up-State Legal Project, there exists no first amendment issue in the *Wyse* case. Wyse has been charged with harassing his landlord by engaging in a course of *conduct* intended to harass, annoy or alarm him, pursuant to Penal Law, §240.25(5).

[14]On April 1, 1975 nonlawyer Justice John Johnson succeeded Justice Hopkins. He has been substituted as the named respondent in the Article 78 proceeding initiated by Wyse. Justice Hopkins successfully completed the state's basic and advanced training courses. He attended a special seminar at Cornell University in 1971 on the Criminal Procedure Law, and attended special traffic law seminars run by the American Bar Association at Harper College and the State University of New York at Binghamton. Justice Johnson, a businessman in Hornell, New York, has also successfully completed the state's basic training course and has been properly certified. He is scheduled to attend the next advanced course.

[15]The criminal proceedings in *Wyse* have been stayed pending the outcome of the civil litigation. That proceeding has in turn been stayed pending a determination in the *Burnham* appeal, now pending in the New York Court of Appeals, and a decision in the present appeal.

[16]Monroe County Supreme Court, Index No. 75-8395.

before the nearest sitting village justice.[17] The felony complaint, which had initially been filed before Justice Tonkin in a town court, was removed to the village court pursuant to New York's Criminal Procedure Law, §180.20(2).

On May 8th, only two days after his arrest, Sanchez was assigned counsel and re-arraigned. He was held on $5,000 bail while several outstanding arrest warrants were checked by law enforcement authorities. On Friday, May 9th, Sanchez was given a preliminary hearing, after which the felony charge was dismissed. The felony complaint was converted to a misdemeanor information pursuant to Criminal Procedure Law, §180.50(3) (iii).

On Monday, May 12th, Sanchez was released from custody and his case was adjourned in contemplation of dismissal.[18] Within a span of six short days, therefore, Sanchez was arrested, arraigned, assigned counsel, given a preliminary hearing, had the felony charge dismissed, and was given an adjournment in contemplation of dismissal on the misdemeanor charge.

Subsequently, however, Sanchez was arrested on a charge of harassment, which in New York is not a crime. It is that harassment charge now pending in the town court which has given rise to the civil action brought by the same attorneys representing Wyse. In the harassment case, Sanchez allegedly threatened to hit his landlady, with vile language and in a way that seriously alarmed her. Sanchez was arraigned on the harassment charge and advised of all of his rights by nonlawyer

[17]The village justice, Francis W. Bierwiler, Jr., in addition to being certified by the state, was a state police officer for almost ten years until multiple sclerosis forced his retirement. His numerous court appearances and special training regarding New York's criminal law has certainly enhanced his ability to preside as the village justice.

[18]Pursuant to Criminal Procedure Law, §170.55.

Justice William Tonkin. Counsel has been assigned, but the civil action has stayed all further proceedings in the town court pending resolution of the civil action.[19]

We have discussed these cases in some detail to give the Court the factual background necessary to understanding the triviality of the complaints in these lawsuits. The plaintiffs in the New York lawsuits have been forced to advance a *per se* theory of incompetence because the nonlawyer justices in those cases have flawlessly presided over the underlying criminal proceedings.

The reason these New York nonlawyer justices have performed so well is the basic and advanced training courses which they must attend, as well as additional special topic seminars presented on a regular basis. These intensive courses deal solely with the New York law which governs their cases.

For example, at the basic training program given at several universities throughout the state three times a year, the nonlawyers are given intensive and highly specific instruction on the use of the law library, the Penal Law and the Vehicle and Traffic Law, the Criminal Procedure Law, including Vehicle and Traffic Law procedural matters, evidence, and constitutional law.[20] This instruction constitutes more than 50% of the intensive course on New York law. We cannot overemphasize that the classes are designed to teach the law relating to those specific matters which arise in justice courts.

---

[19]Justice Tonkin has been a town judge for seven years. He was initially certified by the Administrative Board after successfully completing the Board's basic training course in 1968. He then completed the advanced course and was certified at that level. He has twice attended the advanced course voluntarily as refresher courses. In addition, he has attended special classes administered by the Board on the new Penal Law and Criminal Procedure Law. Justice Tonkin is a process engineer who has been active in industrial management for 30 years.

[20]*See Sanchez* v. *Tonkin*, Monroe County Index No. 75-8395, Intervenor New York State Association of Magistrates' Exhibit XIII.

The intensive advanced course includes a lecture on recent developments in the Vehicle and Traffic Law,[21] instruction on pretrial motion procedures (including suppression motions and hearings), a thorough vascar and radar demonstration by experts, instruction on youthful offender procedures, sentencing and bail provisions, and post judgment remedies.[22] In addition, special two-day trial demonstrations and evidence seminars are regularly administered by the Board.

New York's courses are continually revamped and updated. They are presented to the nonlawyer justices by law professors and practicing lawyers who are particularly skilled and experienced at their assigned subjects. Hundreds upon hundreds of these nonlawyer judges return on an annual basis for refresher courses.

At the conclusion of each of these classes, the nonlawyer justices are required to take and pass an examination which is difficult, specific and relates primarily to criminal cases. The actual subject matter of the examination necessarily constitutes only a portion of the legal materials which the justices are taught and must be prepared to apply on the examination. A passing grade of at least 70 is required. Nonlawyer justices are not permitted to perform their duties if they do not successfully complete these courses. *See Bartlett* v. *Bedient*, A.D.2d , 366 N.Y.S. 2d 735 (4th Dept., April 23, 1975). The certification process of nonlawyer justices in New York is hardly a perfunctory process. Rather, the state takes very seriously the training of its nonlawyer justices.[23]

---

[21]Emphasis on the Vehicle and Traffic Law is dictated by the fact that 90% of the cases occurring in the town and village courts are traffic violations of various kinds. *See* Appendix B at B-1, *infra*.

[22]*See* note 20, *supra*, Exhibit XIV.

[23]Appendix C, *infra*, demonstrates that many other state programs are comparable to or even more extensive than New York's program. Only three states, Arizona, Arkansas and Kentucky, lack specific training programs for nonlawyer judges who preside over cases involving potential jail sentences.

A brief word about the material distributed to the nonlawyer justices at the prescribed New York courses is in order. Every year the materials prepared by lawyers for the Administrative Board are updated and critical appellate decisions are included in the lectures and course materials. Other information obtained from designated state agencies is also made available. For example, manuals prepared by the Department of State, the Department of Agriculture and Markets, the Department of Audit and Control, and the Department of Motor Vehicles, are distributed. When these publications become partially outdated, the relevant revisions and deletions are effected during the course lectures.

In addition, a book entitled *Manual of Procedure for Town and Village Courts of New York State*, by Eugene W. Salisbury, comprehensively analyzes the Criminal Procedure Law, is supplemented annually, and is made available to all town and village justices. A book on evidence, designed for nonlawyer judges, has been published by the National College of the State Judiciary with the use of federal funds.[24] The evidence book is annotated for New York by Professor Robert Barker of Albany Law School. This evidence text has already been used and distributed in five state-administered seminars for nonlawyer judges in New York. The book will be distributed to all judges in the state. Finally, a practice manual on the subject of search and seizure, by Michael J. Brown, Esq., is also made available to each town and village justice in the state.

Further demonstrating the fact that admission to the bar does not in itself prepare an individual to preside over criminal cases[25]

---

[24]E. Gardner Brownlee, *Objections to Evidence* (National College of the State Judiciary, 1974). Judge Brownlee presides in the District Court for Missoula, Montana.

[25]*See* Point III, *infra*.

is the Administrative Board's course for newly elected or appointed lawyer judges in the city, county, surrogate, family, and supreme courts. It has been the Board's experience over the past twelve years that most new judges in those courts have been civil practitioners with little or no experience in the criminal law. Thus, approximately 50% of the course deals with substantive criminal law, criminal procedure, revisions of the mental hygiene law, and rules of evidence.[26]

In its amicus brief in this Court, the Greater Up-State Legal Project suggests that the flexibility allowed the justices attending these courses to miss what amounts to one day of classes impairs the effectiveness of the whole program. Actually, the number of justices who are unable to attend every session of the courses is infinitesimal. Moreover, those who miss a session are not excused from their responsibility for knowing the material, and in fact are tested on it.

In another vein, an education level survey recently conducted by the New York State Association of Magistrates showed that 6% (approximately 120 of New York's 1,983 town and village nonlawyer justices) had completed the grade school level of education. Forty-seven percent (approximately 930) have at least a high school education; 28% (approximately 555) have an associate college degree; 8% (approximately 160) have a bachelor's degree; 6% (approximately 120) have masters' degrees; and 2% (approximately 40) have Ph.D. degrees. The pronounced trend over recent years is a steady increase in the educational level of these nonlawyer justices.[27]

The Court is reminded that we are talking about judges who preside generally in rural communities to which young people

---

[26]*Sanchez* v. *Tonkin*, Monroe County Index No. 75-8395, Intervenor New York State Association of Magistrates' Exhibit XII.

[27]*Id.*, Exhibit XV.

who go off to college seldom return. Thus, nonlawyer candidates for town and village justices are most often persons of prestige who have established themselves in their communities and who have developed reputations for fairness and the ability to comprehend the complexities of modern day criminal law. These judges usually possess a mixture of common sense, such as that referred to by Judge Russell (24). That quality is useful in presiding over the superabundance of minor traffic cases confronting the local judges.

Without intending to minimize the importance of the training given to New York's and other states' nonlawyer judges, it is fair to say that the awesome standards envisioned by the appellant and his supporters are based upon an unrealistic assessment of the actual practice and procedure required in those lower courts. While the appellant can point to categories of offenses involving relatively complex legal problems which hypothetically could arise in New York's town or village courts, or comparable courts in other states, the fact is that such complexities pertain to an extremely small percentage of cases encountered by a local judge in a small or rural community.[28]

Unquestionably, each person's right to due process should be safeguarded. But the critical question is whether it is necessary to provide a duly admitted attorney to preside over the matters which form the bulk of a town or village court's caseload. Clearly, such a result is not necessary where nonlawyers can be adequately trained to preserve fundamental fairness in the proceedings before them.

---

[28]*See* Appendix B at B-1, B-2, *infra*. Moreover, errors of substance which may occur are reviewable upon appeal as a matter of right. Criminal Procedure Law, §450.10.

POINT II

The New York constitutional and statutory provisions require adequate training and education for the state's nonlawyer justices, and are constitutional on their face and as applied.

Pursuant to their powers under the tenth amendment, in New York the people adopted Article 6, §20(c) of the state constitution.[29] That section provides:

> "Qualifications for and restrictions upon the judges of district, town, village or city courts outside the city of New York other than such qualifications and restrictions specifically set forth in (a) of this section, shall be prescribed by the legislature, provided however, that the legislature shall require a course of training and education to be completed by justices of town and village courts selected after the effective date of this article and who have not been admitted to practice law in this state."[30]

There can be little doubt that the tenth amendment authorizes the state to develop its own court system. A state's principal responsibility under its police power is to enact "procedures for enforcing its laws." *Salsburg* v. *Maryland*, 346 U.S. 545, 550 (1954). Toward that end, New York State's constitution provides for a uniform court system consisting in part of nonlawyer judges. The jurisdiction of the latter is limited by Article 2 of the Uniform Justice Court Act to misdemeanors, petty offenses including traffic infractions,[31] and certain civil

---

[29]This provision became effective on September 1, 1962 after being overwhelmingly approved by popular vote on November 7, 1961.

[30]Uniform Justice Court Act, §105(a), and Town Law, §31, implement the requirements of a prescribed course of training and education. *See* Appendix A, *infra*. Former Village Law, §4-416 was omitted when the Village Law was revised in 1972-1973. The legislature intended that §105(a) of the Uniform Justice Court Act should suffice for village justices.

[31]*See* Criminal Procedure Law, §1.20(39).

matters. The legislature's power under the state constitution to prescribe the parameters of justice court proceedings cannot be disputed. *People* v. *Felberbaum*, 9 N.Y.2d 213, 173 N.E.2d 783 (1961).

In *Fay* v. *New York*, 332 U.S. 261 (1947), this Court upheld New York's "special" jury system writing:

> "The function of the . . . Fourteenth Amendment . . . is not to prescribe procedures but is essentially to protect the integrity of the trial process by any method the state sees fit to employ . . . . [Courts] must be organized to hear, try and determine on the evidence and the law. But beyond requiring conformity to standards of fundamental fairness, that have won legal recognition, this Court has been careful not so to interpret this Amendment as to impose uniform procedures upon the several states whose legal systems stem from diverse sources of law and reflect different historical influences." (332 U.S. at 294)

In *Fay* this Court, acknowledging the states' power to organize their own court systems, wrote further:

> "We adhere to this policy of self-restraint and will not use this great centralizing Amendment to standardize administration of justice and stagnate local variations and practice." (332 U.S. at 295)

Although addressing itself to the "special" jury system in New York City, the Court's language clearly extends to the state's power to provide a judicial system which includes nonlawyer judges.[32] A constitutionally necessary ingredient in

---

[32] In response to our reference to the *Fay* decision in *Wyse* v. *Johnson*, Steuben County Index No. 74-34986, the petitioner suggested that *Taylor* v. *Louisiana*, U.S. , 95 S.Ct. 692 (1975), had overruled the *Fay* decision. However, in *Taylor* this Court expressly reaffirmed its earlier decision in *Fay* by stating:

> "It should also be emphasized that in holding that petit juries must be drawn from a source fairly representative of the community, we impose no requirement that petit juries actually chosen must mirror the community and reflect the various distinctive groups in the population. Defendants are not entitled to a jury of any particular composition, *Fay* v. *New York*, 332 U.S. 261, 284 . . . (1974); . . . ." (95 S.Ct. at 702)

the judicial system is the availability of a fundamentally fair trial. The allegation that a properly trained and certified nonlawyer cannot preside over a fundamentally fair trial is simply that — an allegation. The mere statement that a nonlawyer is not a competent judge does not make the nonlawyer in fact an incompetent judge.

In *Shadwick* v. *City of Tampa*, 407 U. S. 345 (1972), the Court rejected a challenge similar to that advanced here and upheld the role of nonlawyer magistrates in issuing arrest warrants. Confronted with a claim that nonlawyers were incapable of determining whether probable cause existed, the Court wrote:

> ". . . he would be able to deduce from the facts on an affidavit before him whether there was probable cause . . . . Our legal system has long entrusted nonlawyers to evaluate more complex and significant factual data than that in the case at hand. Grand juries daily determine probable cause prior to rendering indictments, and trial juries assess whether guilt is proved beyond a reasonable doubt." (407 U.S. at 351-352)

The kinds of legal determinations a nonlawyer magistrate makes before issuing warrants are virtually synonymous with the great majority of legal questions decided in most justice court cases. For instance, a warrant may only be issued upon sufficient application showing probable cause. The magistrate must determine:

a. that the application and accompanying affidavit(s) comply with all statutory requirements as to form;[33]

b. that the actual description of persons, places and things is legally sufficient;

c. that the allegations of information source, if other than personal knowledge, are sufficiently stated to satisfy the legal requirements regarding affidavits (akin to laying a proper foundation);

---

[33] *See, e.g.*, Criminal Procedure Law, §§120.10, 690.35 and 690.45.

d. that the allegations are properly in the affidavit and that they are not unidentified hearsay (akin to questions of admissibility);

e. that the allegations are not legally stale; and

f. that sufficient facts appear to demonstrate probable cause.

All of these decisions involve questions of law. Perhaps most fundamentally, the last requires a comprehensive knowledge of probable cause judicial decisions. The determination of probable cause is thought by many judges to be the most difficult question to regularly come before them. That concept is relevant to the issuance of warrants and to a determination to bind over a felony defendant for grand jury action on his case.[34]

Thus, the nonlawyer magistrate expressly approved by this Court is competent to find the required judicial decisions, read and comprehend them, and apply them on a case by case basis. In short, the Court has expressly recognized a nonlawyer's ability to think like a judge, to determine difficult legal questions, and to take action in a neutral detached manner which directly affects an individual's personal liberty.

Indeed, when a magistrate issues an arrest warrant, as in *Shadwick*, the result will always be an interruption of the defendant's personal liberty and may well involve a lengthy period of incarceration. An individual arrested on a nonlawyer magistrate's warrant, as approved in *Shadwick*, could conceivably spend more time in jail awaiting the disposition of his case than the period of incarceration authorized by statute in

[34]In New York, the Criminal Procedure Law, §180.60(8), uses the synonymous term "reasonable cause" in setting the standard for preliminary hearings and the concomitant determination whether or not to submit the matter to a grand jury.

almost 90% of the cases which come before a nonlawyer town or village justice in New York.[35]

The term "fundamental fairness" has been defined in numerous cases and universally focuses on rights basic to a fair trial. *See, e.g., In re Murchison*, 349 U.S. 133 (1955); *Powell* v. *Alabama*, 287 U.S. 45 (1932); *Helfrick* v. *Dahlstrom Metalic Door Co.*, 256 N.Y. 199 (1931), *aff'd*, 284 U.S. 594 (1931); *State University of New York* v. *Denton*, 35 A.D.2d 176, 316 N.Y.S.2d 297, 302-303 (4th Dept. 1970). In *Helfrick* the court wrote:

> "Unlike our own State Constitution, there is nothing in the Federal Constitution or the Acts of Congress, including the United States Judicial Code . . . , which requires judges of courts, federal or state, to be lawyers or admitted to practice." (256 N.Y. at 205)

In *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972), the Court held that "no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." (407 U.S. at 37.) However, as thoroughly as this Court reviewed the right to counsel in *Argersinger*, it never suggested that a nonlawyer judge, trained and certified by the state, was not competent to preside over criminal matters within his court's jurisdiction. *See*

[35]The amicus curiae Greater Up-State Legal Project has misstated this Court's holding in *Mitchell* v. *W. T. Grant Co.*, 416 U.S. 600 (1974). That case dealt with an ex parte writ issued to a creditor by a municipal judge ordering the sequestration of property *pending a hearing* at which the debtor could be heard. This Court upheld the Louisiana statutory procedure in question. In *Mitchell* the Court discriminated between an untrained clerk and a judge. In dictum the Court distinguished *Fuentes* v. *Shevin*, 407 U.S. 67 (1972). In *Fuentes* an untrained clerk, *without any judicial supervision*, was authorized by the state's replevin statute to issue a writ for the repossession of goods *without notice or the right to a hearing*. These cases involving state replevin statutes are totally inapposite here. Where nonlawyer judges are trained and certified, as in New York, they may hardly be considered untrained clerks.

also Ward v. *Village of Monroeville*, 409 U.S. 57 (1972), where the judge's lack of legal training was forcefully but unsuccessfully urged upon this Court as a ground for reversal.

Simply put, the competency of a particular presiding judge must be determined on a case by case basis whether the judge is a lawyer or a nonlawyer. Indeed, many lawyer judges make critical errors at trial which are corrected on appeal without labeling the trial judge incompetent. *Cf. Beck* v. *Washington*, 369 U.S. 541, 554-555 (1962).

Even lawyer judges often misunderstand or disagree with a defense lawyer's argument without denying a defendant the right to counsel. The constitution extends to a criminal defendant the right to the assistance of counsel. *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972). There is, however, no constitutional right to the *successful* assistance of counsel, which is the logical extension of the appellant's contention.

Presumption of Constitutionality

In attacking the validity of statutory and constitutional provisions which authorize nonlawyer justices to preside over criminal proceedings, a criminal defendant bears a heavy burden of overcoming the presumption in favor of their constitutionality. *San Antonio Independent School District* v. *Rodriguez*, 411 U.S.1 (1973); *Schilb* v. *Kuebel*, 404 U.S. 357 (1971); *McDonald* v. *Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969); *McGowan* v. *Maryland*, 366 U.S. 420 (1961); *Salsburg* v. *Maryland*, 346 U.S. 545 (1954); *Fay* v. *New York*, 332 U.S. 261 (1947); *Snyder* v. *Massachusetts*, 291 U.S. 97 (1934); *Graham* v. *West Virginia*, 224 U.S. 616 (1911); *Lindsley* v. *National Carbonic Gas Co.*, 220 U.S. 61 (1910); *Missouri* v. *Lewis*, 101 U.S. 22 (1879).

In *McDonald* the Court stated:

> "The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal. Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them." (394 U.S. at 809)[36]

Sixty percent of the states in this country do not require the judges of their lowest level courts to be lawyers.[37] This practice accords with Justice Brandeis' federalism theory frequently approved by this Court that each state is free to serve as a "laboratory" for the development of sound practices consonant with the fundamental fairness doctrine.[38] That concept is, of course, relevant because of the contention that the federal constitution supposedly bars a nonlawyer from presiding in a criminal case.

In *San Antonio Independent School District* the Court, noting the importance of education, examined the Texas statutory scheme for financing public education at the primary and secondary levels. The Court wrote:

> "... we think it plain that, in substance, the thrust of the Texas system is affirmative and reformatory and, therefore, should be scrutinized under judicial principles sensitive to the nature of the State's efforts and to the rights reserved to the States under the Constitution. ... A century of Supreme Court adjudication under the Equal Protection Clause affirmatively supports the application of the traditional standard of review, which

---

[36]The *McDonald* decision upheld the Illinois absentee ballot statutory provision which excluded inmates of state correctional facilities.

[37]*See* Appendix C, *infra*.

[38]*New York State Ice Co.* v. *Liebmann*, 285 U.S. 262, 280 (1932), Brandeis, J., dissenting.

requires only that the State's system be shown to bear "some rational relationship to legitimate state purposes." (411 U.S. at 39, 40)

The Court declined to alter the Texas statutory scheme for funding its public schools, holding that the state system did not deny respondent due process of law. In that case, despite a showing of drastic disparity in financing among the state's school districts, the Court observed that the Texas statutory scheme was virtually identical to the school financing methods in effect in almost every other state. Similarly, New York's justice court system is similar to most of the other states' systems.

Further, a state may choose, as has Kentucky, to protect a defendant's rights by assuring him a trial *de novo* before a lawyer judge. *Colten* v. *Kentucky*, 407 U.S. 104 (1972). That protection is comparable to an appeal to an appellate court authorized to review the facts. The right to review, coupled with the limited jurisdiction of local courts presided over by adequately trained and certified nonlawyer judges is sufficiently affirmative and reformatory to come within the standards followed in the *San Antonio* case.

Constitutional challenges similar to those raised here have reached the appellate courts in other states and, except for the *Gordon* decision, *infra*, have generally been rejected. *See, e.g., Deck* v. *Hammer*, 7 Ariz. App. 466, 440 P.2d 1006 (1968); *State ex rel. Sellers* v. *Parker*, 87 Fla. 181, 100 So. 260 (1924); *City of Decatur* v. *Kushmer*, 43 Ill.2d 334, 253 N.E.2d 425 (1969); *Ditty* v. *Hampton*, 490 S.W.2d 772 (Ky.Ct.App. 1973), *appeal dismissed*, U.S. , 94 S. Ct. 219 (October 15, 1973); *Heard* v. *Moore*, 290 S.W.15 (Tenn. Sup. Ct. 1926); *Little* v. *State*, 75 Tex. 616, 12 S.W.965 (1890); *cf. People of the State of New York* v. *Wood*, 252 Supp. 270 (S.D.N.Y. 1966).

In New York, the Appellate Division, Fourth Department, has approved New York's constitutional provision authorizing nonlawyer town and village justices. In *In re Storace*, 30 A.D.2d 220, 291 N.Y.S.2d 416 (4th Dept. 1968), the court held that a nonlawyer could not preside as a "Justice of the Peace" for the City of Rome. That position, however, was in reality a city court judgeship for which N.Y. Const., art. 6, §20(a) specifically required an attorney.[39]

The California Supreme Court decision in *Gordon* v. *Justice Court*, 12 Cal.3d 323, 525 P.2d 72 (1974), *cert. denied sub nom. California* v. *Gordon*, 420 U.S. 938 (1975), relied upon by the appellant, is unsound and distinguishable on very substantial grounds. There the California court, with no factual support in the record, took notice of the supposed fact that there are more lawyers and better roads in that state today than there were in a period during which the town or village justice court system came into being in this country.

---

[39]The appellate division wrote:

"It must be observed that, of the courts authorized by Article VI, §1 subd. a. to be part of the unified court system, the only groups which are not included among the courts whose judges must be attorneys by §20 are town and village courts outside the city of New York. Special legal training for justices of these latter courts who are not attorneys is mandated by subdivision c. of §20 which directs that the legislature 'shall require a course of training and education to be completed by justices of town and village courts selected after the effective date of this article who have not been admitted to practice law in this state.' Since, however, §20 subd. c. does not include justices within cities, such persons are exempt from the special training there prescribed. If respondent's construction of §20, subd. a. is accepted (by which the Rome justice court would not be included among city courts whose office holders must be admitted to practice in this state), city justice courts would be the only courts within the unified court system presided over by persons lacking any legal background or training and who could be less qualified than a justice of a town or village. We do not believe such a result was intended or contemplated, and no such construction should be adopted." (291 N.Y.S.2d at 418-419)

The California court, however, overlooked the fact that lawyers still do not *reside* in many rural areas of that state. Similarly, in New York residency in the jurisdiction is a principal requirement for holding a judgeship. *See* New York Public Officers Law, §3(1); Town Law, §23; Village Law, §3-300(2); *Landes* v. *Town of North Hempstead*, 20 N.Y.2d 417, 231 N.E.2d 120 (1967).[40] Even in those jurisdictions in New York where there are only a few lawyers, they are often unwilling or unable due to a conflict of interests to assume a judicial post.

For whatever reason, therefore, lawyers are simply unavailable to be judges in many of New York's towns and villages. We suspect the same is true in many states throughout the nation.[41] Thus, the facts *assumed* in *Gordon* are simply not true in New York and many other states. The people of New York and their elected representatives in the legislature have provided for trained nonlawyer justices to serve the judicial needs of a large part of the state where otherwise those needs would be virtually ignored. Those needs constitute a legitimate state purpose for enacting New York's constitutional and statutory provisions authorizing nonlawyer justices.

No Denial of Equal Protection of the Law

The appellant and his supporting amici curiae claim that a criminal defendant who appears before a nonlawyer judge in one jurisdiction, who would appear before a lawyer judge if the offense had been committed in another jurisdiction, is denied equal protection of the law. That contention is wholly without merit. First, all criminal defendants who appear in the nonlawyer judge's court are treated equally for purposes of the issue raised in this appeal. Moreover, since the appellant, and

[40]These statutory provisions may be found in Appendix A to this brief.

[41]*See* Appendix C, *infra*.

more particularly the criminal defendants in nonlawyer justice courts in New York, do not belong to a suspect class, for equal protection purposes they must demonstrate that there is no rational justification for the present classification of nonlawyer justices. Criminal defendants in New York nonlawyer justice courts cannot successfully urge such a contention.[42]

It is incontrovertible that approximately 90% of the cases handled in New York's town and village justice courts are vehicle and traffic cases.[43] While in *Gordon* the California court was dealing with only 232 justice of the peace courts, New York's pervasive system involves approximately 1,500 town and village justice courts and 1,983 nonlawyer justices.[44] In California the justice court system was optional and did not have

[42]The appellant's passing reference to *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), is badly misplaced. In *Shapiro* the Court struck down welfare residency laws which were calculated to deny indigents desperately needed welfare assistance simply "to protect the public fisc." Those statutes directly and adversely affected fundamental constitutional rights and were based upon purely arbitrary classifications. Here, however, the appellant can point to no fundamental right which was abridged solely because Judge Russell was not a lawyer. The only right which may have been violated — the right to a jury trial — would presumably have been abridged even if the Lynch City Attorney had been the City Judge.

Of special importance to this amicus curiae is the fact that in the New York lawsuits discussed above, there were no fundamental rights violated by the nonlawyer justices. The requirement in *Shapiro* that the state choose the least restrictive method of achieving the ends sought by the legislation is inapposite here. In any event, in New York and the overwhelming majority of the other states employing nonlawyer judges, the states have provided for extensive training of their nonlawyer judges and have limited the jurisdiction of their courts to minor offenses. The majority of states, therefore, have acted to protect fundamental rights and to save millions of dollars in providing a well trained nonlawyer judiciary to preside over petty offenses most of which are traffic matters.

[43]*See* Appendix B at B-1, *infra*.

[44]*See* Appendix B at B-8, *infra*.

to be adopted by the various counties. In New York and many of the other states, however, the justice court system is deeply ingrained in our judicial system.

If a district court plan were adopted in New York which assumed the *entire* caseload of the city, village and justice courts, and whose judges were all lawyers, the *annual* cost, excluding monies needed to construct new buildings and courtroom facilities, would be almost $70 million more than the cost of the present system.[45]

As the tables appended to this brief demonstrate, a requirement that town and village justices be lawyers, which could only be implemented by way of a state-wide district or circuit court system, would effectively reduce the number of local judges by approximately 1,300.[46] The resulting clogged calendars, tremendous inconvenience for litigants and intolerable expense would be catastrophic. Moreover, the district court system would prompt a purely computerlike treatment of the thousands of cases each of the reduced number of judges would have to handle. The lack of human understanding expected of judges by litigants who appear before them would severely diminish the quality of our judicial system. *Argersinger* v. *Hamlin*, 407 U.S. 25, 35-36 (1972).[47]

---

[45] *See* Appendix B at B-3, B-4. These staggering costs are in sharp contrast to the $1.5 million in California expenditures suggested in the appendix to the amicus brief of the American Judicature Society.

[46] *See* Appendix B at B-4. The number of court locations would also be drastically reduced.

[47] Even if the "mandated district court counties" and "proposed town court counties" plan recommended by the Temporary Commission on the New York State Court System were adopted in New York, whereby district courts would be installed in only the 16 most populous counties in the state, that would not resolve the issue posed in this appeal. That proposal does not require the district courts to hear the traffic cases, many of which carry

(Footnote continued on following page.)

In reviewing the long history of nonlawyer justices and the vital role they have played in our judicial system, we are reminded of Justice Holmes' comment in *Jackman* v. *Rosenblaum Co.*, 260 U.S. 22, 31 (1922):

> "If a thing has been practiced for 200 years by common consent, it will need a strong case for the fourteenth amendment to affect it . . . ."

When it is considered that the federal constitution does not even require a United States Supreme Court Justice to be an attorney, the more stringent qualification urged by the appellant is all the more irreconcilable. For surely the members of the lowest level of our judiciary may not fairly be required to possess law degrees which are not demanded of the members of our highest tribunal.

The state laws authorizing the use of nonlawyers as town and village justices in New York are well within the boundaries of the fourteenth amendment. The fact that a nonlawyer presides in a given justice court does not in itself demonstrate a violation of fundamental constitutional rights.

(Footnote continued from preceding page.)

potential incarceration, and which comprise 90% of the justice court caseload. Those cases would still be heard in the town justice courts. *Cf.* Appendix B at B-6, B-7. As the New York Temporary Commission wrote in its publication . . . *And Justice for All* (January, 1973), at 27:

> "There should be town courts in all areas not served by district courts. Even where a district court is established continuance of the town court may be attractive for reasons of cost and accessibility . . . .
>
> * * *
>
> "The Commission believes that for certain matters accessibility outweighs the benefits of a full-time court and therefore recommends that the following subject matter be retained by town courts: petty offenses, traffic infractions and violations of law, civil actions to $500, and summary proceedings presently within the court's purview. Without legal accessibility, citizens might feel compelled to pay fines or avoid using the courts as a remedy because the long travel distances and amount of expenditures would not make it worthwhile."

Alternative Forms of Relief

In New York there exist adequate remedies for a criminal defendant tried before a town or village justice whom he alleges to be incompetent. First, the defendant may move in that court for the justice to disqualify himself. *People* v. *Bonnerwith*, 69 Misc.2d 516, 330 N.Y.S.2d 248 (Justice Ct., Town of Rhinebeck, Dutchess Co., 1972).

If that motion is denied, the defendant may move in the county court for the removal of his case to another court, based upon the disqualification of all of the judges of the court in which his case is pending. Criminal Procedure Law, §170.15(3)(a). If unsuccessful, the defendant may demand that a stenographer be employed at the municipality's expense and proceed to trial.[48] If convicted, the defendant may appeal the judgment upon a full stenographic record. Criminal Procedure Law, §§450.10. Moreover, if given a jail sentence the defendant may apply for bail pending his appeal, pursuant to Criminal Procedure Law, §460.50(2)(d).

Clearly, the *per se* theory advanced by the appellant and the criminal defendants in the New York lawsuits is an inappropriate vehicle to test the competency of local judges presiding over petty offenses.[49] Only case by case determinations would accommodate the state's legitimate interest in establishing judicial systems which include carefully trained nonlawyer judges. Where state legislation, such as that in New York, provides for the conventional airing of constitutional complaints, pursuit of those methods of relief should be required. The business of litigating asserted abstract constitutional

[48]Uniform Justice Court Act, §2021.

[49]*Sanchez* v. *Tonkin*, Monroe County Index No. 75-8395; *Joseph W. (Anonymous)* v. *Burnham*, Onondaga County Index No. 75-1291; and *Wyse* v. *Johnson*, Steuben County Index No. 74-34986.

violations is irreconcilable with the requirement that actual controversies must underlie judicial determinations. This Court should uphold the nonlawyer justice system where implemented with proper safeguards to insure fundamentally fair proceedings.

POINT III

A law school education and admission to the bar do not in themselves qualify an individual to preside in a criminal court.

In its amicus brief the Kentucky Bar Association suggests that we should resolve the growing difficulty of finding jobs for recent law graduates by placing them in the judgeships presently occupied by nonlawyers.[50] Perhaps where nonlawyer judges have had *no* legal training of any kind, that solution would have some merit. Law students are taught how to be analytical. And at first blush it may appear that law graduates admitted to practice are more competent than the state-trained nonlawyers to preside in criminal courts. For the following reasons, however, we believe that claim is largely illusory.

There are eleven accredited law schools in New York State. Only one (New York University) requires its students to pass a course in Criminal Procedure Law.[51] Most, but not all, of the law schools require an introductory constitutional law course. However, those courses deal overwhelmingly with constitutional principles applied in civil proceedings. Only five law schools require a class on evidence, and those courses do not deal with criminal law or criminal procedure, and certainly not with the

[50]Brief of Amicus Curiae Kentucky Bar Association at 13.

[51]The source of this information is a review of the bulletins of each of the eleven law schools and telephone discussions with a representative of the registrar's office of each of the law schools.

evidence article of the Criminal Procedure Law.[52] Ten of the eleven schools require a one semester course on criminal law or criminal justice, but none of the law schools have a course geared to the Vehicle and Traffic Law. The focal points of the legal training in our law schools are unquestionably commercial law and civil practice.

Although there may be elective courses which students may study, the *required* courses dealing with criminal law and criminal procedure, and related evidentiary and constitutional questions, hardly prepare a lawyer to preside over criminal cases in a justice court. Those basic courses, as any lawyer can substantiate, deal with legal theories and philosophies as they relate only generally to the area of criminal law and its role in controlling socially undesirable behavior.

Moreover, law students study from texts which are geared to no particular jurisdiction. The judicial decisions printed in such books only rarely involve New York statutes and New York courts. Indeed, in a typical text used for a basic criminal law course in New York, fewer than 10% of the cases were New York decisions. Rather, cases dealing with such generic topics as "criminal responsibility", "uncompleted criminal conduct", "misappropriation and related property offenses", ranged from Wyoming to Florida and Maine to Arizona.[53]

Similarly, in a typical text on evidence used in many New York law schools, only 5% of the cited decisions involve New York courts and New York rules of evidence.[54] None of those

---

[52] *See* Criminal Procedure Law, art. 60.

[53] *See* Inbau and Sowle, *Cases and Comments on Criminal Justice* (Foundation Press, 1964). Both authors are professors at Northwestern University in Chicago, Illinois.

[54] *See* Sullivan and Hardin, *Evidence, Cases and Materials* (Foundation Press, 1968). Sullivan is a professor at Louisiana State University and Hardin is a professor at Duke University.

decisions involved a criminal matter. In a popular text used in the typical basic criminal procedure course, required merely at one law school in New York, only three significant decisions by a New York court were cited.[55] Moreover, that inaptly titled course is actually a hasty review of the Bill of Rights and related decisions by this Court. In short, there is no reference to the New York Criminal Procedure Law and nothing in the typical criminal procedure course which would prepare a lawyer to preside over a justice court criminal case. Further, those courses are routinely taught by professors who have little or no courtroom experience.

Nor does the bar examination adequately test a candidate's knowledge of criminal law, criminal procedure, constitutional law, or related rules of evidence. In the typical bar review course, only seven out of 160 hours are devoted to instruction in those areas of the law. Moreover, students from New York and out-of-state schools taking the bar review courses in New York are actually instructed that they need not be familiar with the Criminal Procedure Law.

And the bar examination itself deals only sparingly with these subjects. On the typical bar examination, only one essay out of twelve involves a question of criminal law, and then it is usually in conjunction with a constitutional law and evidentiary question. Similarly, out of the 160 "yes-no" type questions on the bar examination, at the most ten (6%) concern criminal law and even fewer relate to the rules of evidence.[56] For all intents and purposes, the bar examination does not test one's knowledge

---

[55] *See* Hall and Kamisar, *Modern Criminal Procedure* (West, 1966). Hall is a professor at Harvard University and Kamisar is a professor at the University of Michigan.

[56] All of this information was derived from discussions with persons in charge of coordinating some of the principal bar review courses, and from counsel's personal recollection of the content of the bar examination.

of the Vehicle and Traffic Law. The pass-fail percentile varies from time to time, and in New York has been set as low as 45.[57]

In a revealing interview after the July, 1972 bar examination, the esteemed Chairman of the New York Board of Law Examiners, Arthur Karger, said that the essay questions on the test "are by far the most important part."[58] In response to criticism that only 8% of the essay questions relate to criminal law, Mr. Karger "replie[d] that criminal law is a small part of the profession . . . ." This same article sums up the attitudes toward the bar examination of some of the *successful* candidates in this fashion:

> ". . . it is an irrelevant test that measures nothing but the ability to memorize the legal trivia practicing lawyers look up as the occasion arises."[59]

Finally, Chief Justice Burger took stock of the lack of preparation law schools provide in the area of criminal law when he recently said:

> "While the district courts were trying to cope with the larger increase in cases, they were also trying to adjust to the infusion of this host of new lawyers, many of whom had had little experience in litigation and a minimum of training for the difficult and exacting task of prosecuting or defending a criminal case.
>
> * * *
>
> "The standards for selection in the tenure and compensation of these lawyers, on whom the system of justice must depend, should be made sufficiently attractive so that the federal courts will not continue to be used as a 'bush league' facility to train trial lawyers for private practice."[60]

---

[57] *The New York Times*, Sunday, December 10, 1972, at 80.

[58] *Ibid.*

[59] *Ibid.*

[60] Chief Justice Burger, Annual Report on the State of the Judiciary, American Bar Association, Mid-Winter Meeting, February 23, 1975.

Conclusion

The question raised here is simple and straightforward. Is it necessary to have a lawyer judge to provide fundamentally fair proceedings involving petty criminal offenses? The appellant's eloquence notwithstanding, in fact the answer is no. Properly trained nonlawyers may safeguard a defendant's rights and fairly preside in a court of limited criminal jurisdiction.

This Court is urged to examine the entire national picture and to review the numerous judicial "laboratories" which prolifically produce competent nonlawyer judges. These various systems economically resolve difficult problems inherent in providing criminal justice in much of rural America. The prohibitive cost of converting to an all lawyer judiciary, with its concomitant reduction in individual attention in the local courts, strongly militates against any sweeping changes. That is particularly true where the constitutional complaints are advanced in the abstract with no real connection to fundamental fairness.

Respectfully submitted,

Eugene W. Salisbury, Esq.
Duncan S. MacAffer, Esq.
Attorneys for New York State Association of Magistrates
One Niagara Square
Buffalo, New York 14202
(716) 849-1333

Lawrence A. Schulz, Esq.
of Counsel.

CERTIFICATE OF SERVICE

I, Lawrence A. Schulz, one of counsel for the New York State Association of Magistrates, amicus curiae herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 4th day of September, 1975, I served on Hon. Ed W. Hancock, Attorney General of Kentucky, Capitol Building, Frankfort, Kentucky 40601, Hon. Wix Unthank, Commonwealth Attorney, Harlan, Kentucky 40831, Attorneys of Record for Appellees, C. B. Russell and Nathaniel "Trap" Helton; and Eugene Goss, Central Street, Harlan, Kentucky 40831 and Dean Hill Rivkin, 630 Maxwelton Court, Lexington, Kentucky 40508, Attorneys for Appellant, three copies each of this brief of amicus curiae, causing the same to be mailed, postage prepaid, to each of said attorneys.

Lawrence A. Schulz

Lawrence A. Schulz

APPENDIX

APPENDIX A

New York Constitutional and Statutory Provisions

N.Y. Const., art. 6, §20(c):

c. Qualifications for and restrictions upon the judges of district, town, village or city courts outside the city of New York, other than such qualifications and restrictions specifically set forth in subdivision a of this section, shall be prescribed by the legislature, provided, however, that the legislature shall require a course of training and education to be completed by justices of town and village courts selected after the effective date of this article who have not been admitted to practice law in this state.

N.Y. Const., art. 6, §28:

The authority and responsibility for the administrative supervision of the unified court system for the state shall be vested in the administrative board of the judicial conference. The administrative board shall consist of the chief judge of the court of appeals, as chairman, and the presiding justices of the appellate divisions of the four judicial departments. The administrative board, in consultation with the judicial conference, shall establish standards and administrative policies for general application throughout the state. The composition and functions of the judicial conference shall be as now or hereafter provided by law. In accordance with the standards and administrative policies established by the administrative board, the appellate divisions shall supervise the administration and operation of the courts in their respective departments.

Uniform Justice Court Act, §105(a):

(a) Training. No town or village justice selected for a term of office commencing on or after September first, nineteen hundred sixty-seven, except one who has been admitted to practice law in this state, shall assume the functions of his office unless he has

filed with the clerk of his municipality a certificate of completion of a course of education and training prescribed by the administrative board. The administrative board may issue a temporary certificate enabling a town or village justice to assume the functions of his office pending completion of the earliest such course available thereafter. Such certificates shall be in a form, and subject to terms and conditions, prescribed by the administrative board.

Town Law, §31 (3) and (4):

3. No town justice selected for a term of office commencing on or after September first, nineteen hundred sixty-seven, except one who has been admitted to practice law in this state, shall assume the functions of his office unless he has filed in the office of the town clerk a certificate of completion of a course of training prescribed by the administrative board of the judicial conference. The administrative board may issue a temporary certificate enabling a justice to assume the functions of his office pending completion of the earliest such course available thereafter. Such certificates shall be in a form, and subject to terms and conditions, prescribed by the administrative board.

4. Notwithstanding any other law, actual and necessary expenses incurred by a justice or justice elect in attending a course of training required of him before he can assume the functions of his office shall be a charge against the town.

Public Officers Law, §3(1):

1. No person shall be capable of holding a civil office who shall not, at the time he shall be chosen thereto, have attained the age of eighteen years, except that in the case of youth boards or youth commissions only, members of such boards or commissions may be under the age of eighteen years, but must have

attained the age of sixteen years on or before appointment to such youth board or commission, be a citizen of the United States, a resident of the state, and if it be a local office, a resident of the political subdivision or municipal corporation of the state for which he shall be chosen, or within which the electors electing him reside, or within which his official functions are required to be exercised, or who shall have been or shall be convicted of a violation of the selective draft act of the United States, enacted May eighteenth, nineteen hundred seventeen, or the acts amendatory or supplemental thereto, or of the federal selective training and service act of nineteen hundred forty or the acts amendatory thereof or supplemental thereto.

Town Law, §23:

Every elective officer of the town at the time of his election and throughout his term of office, shall be an elector of the town. Every other officer of the town at the time of his appointment and throughout his term of office shall be an elector of the town except that in towns having no resident attorney, the town attorney and such counsel as may be employed need not be electors and in towns having no resident engineer, the town engineer and such consultant engineers as may be employed need not be electors. No county treasurer, district superintendent of schools, or trustee of a school district shall be eligible to the office of supervisor.

Village Law, §3-300(2):

2. No person shall be eligible to be appointed to or to hold any other village office who: is not a citizen of the United States; is not at least eighteen years of age; except as may otherwise be provided by law, is not a village resident; and, if eligibility to or holding of such office is subject to regulation under the civil

service law or any other law, does not meet the requirements of such law or laws. Notwithstanding any other provisions of law to the contrary, the board of trustees of a village may provide, in lieu of any other residency requirement imposed by law, that any appointed village officer may reside within a county in which the village is wholly or partially situated.

APPENDIX

B-1

Distribution of Types of Cases in Town and Village Justice Courts, Calendar Year 1973, By County.[1]

	Traffic Offenses[a]	Misdemeanors	Civil Cases	Other State Offenses[b]
Albany	91%	6%	1%	1%
Allegany	90%	5%	3%	1%
Broome	94%	4%	1%	a
Cattaraugus	80%	11%	4%	4%
Cayuga	91%	6%	2%	a
Chautauqua	87%	8%	4%	a
Chemung	90%	7%	2%	a
Chenango	85%	6%	8%	a
Clinton	89%	7%	1%	2%
Columbia	92%	4%	2%	1%
Cortland	93%	5%	2%	a
Delaware	84%	9%	4%	3%
Dutchess	86%	7%	6%	1%
Erie	89%	7%	3%	a
Essex	87%	6%	3%	2%
Franklin	83%	9%	4%	2%
Fulton	85%	10%	2%	2%
Genesee	89%	6%	2%	a
Greene	89%	6%	3%	1%
Hamilton	80%	12%	2%	5%
Herkimer	90%	4%	4%	1%
Jefferson	85%	8%	5%	1%
Lewis	90%	4%	5%	1%
Livingston	87%	9%	1%	1%
Madison	94%	3%	2%	a
Monroe	89%	9%	1%	1%
Montgomery	92%	5%	2%	1%
Niagara	97%	8%	3%	1%
Oneida	91%	6%	2%	1%

B-2

Distribution of Types of Cases in Town and Village Justice Courts, Calendar Year 1973, By County.

	Traffic Offenses[a]	Misdemeanors	Civil Cases	Other State Offenses[b]
Onondaga	89%	7%	3%	1%
Ontario	84%	9%	5%	1%
Orange	89%	6%	3%	1%
Orleans	89%	8%	2%	a
Oswego	89%	6%	3%	1%
Otsego	89%	4%	4%	2%
Putnam	81%	10%	7%	1%
Rensselaer	89%	7%	1%	2%
Rockland	87%	6%	6%	1%
St. Lawrence	84%	8%	6%	1%
Saratoga	93%	4%	2%	1%
Schenectady	92%	5%	1%	1%
Schoharie	87%	7%	3%	2%
Schuyler	75%	16%	5%	4%
Seneca	90%	6%	2%	a
Steuben	80%	9%	9%	1%
Sullivan	82%	14%	2%	1%
Tioga	91%	5%	2%	a
Tompkins	88%	7%	2%	1%
Ulster	90%	7%	2%	1%
Warren	62%	9%	1%	3%
Washington	87%	9%	3%	1%
Wayne	84%	10%	4%	1%
Westchester	94%	2%	3%	a
Wyoming	87%	6%	4%	2%
Yates	90%	6%	2%	1%
New York State Average (excluding the New York City and Long Island counties)	89%	6%	3%	1%

a Vehicle and Traffic Law Titles I through VII, except Article 2-A, Title VII, §§1180, 1182, 1190 and 1192, Titles VIII through X. For purposes of this table, §1180 does not include speed limits established under §§1622-a, 1643, 1644, 1663 and 1670.

b Agriculture and Markets Law, Alcoholic Beverage Control Law, Banking Law, Civil Rights Law, Conservation Law, Correction Law, County Law, Domestic Relations Law, Education Law, General Business Law, Labor Law, Navigation Law, etc.

1 Analysis of Reports of Town Justices and Village Justices for the Year 1973, Justice Court Fund, New York State Department of Audit and Control, Albany, New York

B-3

Comparative Cost Analysis if the District Court System were Implemented Statewide in Contrast with Justice Court Costs — 1973 (Excluding Facilities, Equipment and Other Contractual Expenses)

County	Proposed Number of Justices Based on 1973 Caseload[2]	Proposed Justices Salaries ($30,000 per Annum)	Proposed Support Staff Per Justice (8 Staff Members at $6,250 per Annum, or $50,000 per Justice)	Total Proposed Personal Service Expense	1973 Number of Town and Village Justices	1973 Town and Village Justice and Support Staff Expenditures	Comparison of Commission Recommendation with Expense of Current Justice System Increase (+) Decrease (-)	Comparison of Commission Recommendation with Expense of Current Justice System - Per Capita Cost - Commission	Current System
Albany	15	$ 450,000	$ 750,000	$1,200,000	25	$ 139,230	$+1,060,770	$ 8.57	$ .69
Allegany	5	150,000	250,000	400,000	67	58,481	+ 341,519	8.60	1.25
Broome	19	570,000	950,000	1,520,000	38	145,822	+1,374,178	9.63	.82
Cattaraugus	6	180,000	300,000	480,000	71	77,991	+ 402,009	8.78	1.42
Cayuga	5	150,000	250,000	400,000	54	64,008	+ 335,992	9.33	1.49
Chautauqua	11	330,000	550,000	880,000	58	120,246	+ 759,754	9.70	1.32
Chemung	7	210,000	350,000	560,000	27	71,403	+ 488,597	9.09	1.15
Chenango	4	120,000	200,000	320,000	50	43,314	+ 276,686	8.52	1.15
Clinton	5	150,000	250,000	400,000	35	56,218	+ 343,782	7.37	1.03
Columbia	8	240,000	400,000	640,000	38	76,221	+ 563,779	15.03	1.79
Cortland	5	150,000	250,000	400,000	33	33,614	+ 366,386	15.22	1.27
Delaware	5	150,000	250,000	400,000	41	56,280	+ 343,720	8.94	1.25
Dutchess	16	480,000	800,000	1,280,000	48	175,310	+1,104,690	7.23	.89
Erie	48	1,440,000	2,400,000	3,840,000	63	586,609	+3,253,391	6.39	.97
Essex	5	150,000	250,000	550,000	37	100,064	+ 449,936	15.88	2.98
Franklin	6	180,000	300,000	480,000	41	78,949	+ 401,051	10.92	1.79
Fulton	3	90,000	150,000	240,000	22	29,709	+ 210,291	10.47	1.28
Genesee	7	210,000	350,000	560,000	30	72,906	+ 487,094	13.53	1.76
Greene	7	210,000	350,000	560,000	32	57,806	+ 502,394	16.90	1.73
Hamilton	1	30,000	50,000	80,000	19	28,320	+ 51,680	16.97	8.00
Herkimer	9	270,000	450,000	720,000	43	70,221	+ 649,779	11.99	1.17
Jefferson	8	240,000	400,000	640,000	56	87,127	+ 552,873	11.08	1.30
Lewis	3	90,000	150,000	240,000	40	31,274	+ 208,726	10.15	1.32
Livingston	7	210,000	350,000	560,000	41	76,922	+ 483,078	10.36	1.42

CONTINUED

B-4

Comparative Cost Analysis if the District Court System were Implemented Statewide in Contrast with Justice Court Costs — 1973 (Excluding Facilities, Equipment and Other Contractual Expenses)

Madison	11	$ 330,000	$ 550,000	$ 880,000	39	$ 65,736	$+ 814,264	$17.18		$1.28
Monroe	24	720,000	1,200,000	1,920,000	42	280,168	+ 1,639,832	4.60		.67
Montgomery	4	120,000	200,000	320,000	20	33,604	+ 286,396	10.50		1.10
Niagara	9	270,000	450,000	720,000	25	120,045	+ 599,955	6.11		1.35
Oneida	12	360,000	600,000	960,000	64	127,997	+ 832,003	7.31		.97
Onondaga	28	840,000	1,400,000	2,240,000	50	247,186	+ 1,992,814	8.12		.89
Orange	27	810,000	1,350,000	2,160,000	51	226,497	+1,933,503	13.17		1.38
Orleans	5	150,000	250,000	400,000	22	47,212	+ 352,788	10.72		1.26
Oswego	5	150,000	250,000	400,000	45	76,343	+ 323,657	6.06		1.15
Otsego	4	120,000	200,000	320,000	52	51,888	+ 268,112	7.98		1.29
Putnam	6	180,000	300,000	480,000	15	119,171	+ 360,829	8.46		2.10
Rensselaer	8	240,000	400,000	640,000	30	86,714	+ 553,286	8.05		1.09
Rockland	28	840,000	1,400,000	2,240,000	21	190,494	+ 2,049,506	9.74		.82
St. Lawrence	13	390,000	650,000	1,040,000	72	144,513	+ 895,487	10.67		1.48
Saratoga	13	390,000	650,000	1,040,000	42	101,090	+ 938,910	10.75		1.04
Schenectady	6	180,000	300,000	480,000	11	55,114	+ 424,886	5.77		.66
Schoharie	3	90,000	150,000	240,000	36	34,599	+ 205,401	9.69		1.39
Schuyler	2	60,000	100,000	160,000	19	25,406	+ 134,594	9.55		1.51
Seneca	6	180,000	300,000	480,000	22	49,137	+ 430,863	13.68		1.40
Steuben	7	210,000	350,000	560,000	73	102,046	+ 457,954	7.82		1.42
Sullivan	16	480,000	800,000	1,280,000	35	104,786	+ 1,175,214	24.34		1.99
Tioga	7	210,000	350,000	560,000	23	43,764	+ 516,236	12.03		.94
Tompkins	6	180,000	300,000	480,000	24	47,774	+ 432,226	9.44		.93
Ulster	20	600,000	1,000,000	1,600,000	43	157,543	+ 1,442,457	13.82		1.36
Warren	6	180,000	300,000	480,000	23	68,085	+ 411,915	14.91		2.11
Washington	5	150,000	250,000	400,000	41	56,252	+ 343,748	7.58		1.06
Wayne	9	270,000	450,000	720,000	37	93,648	+ 626,352	9.06		1.17
Westchester	136	4,080,000	6,800,000	10,880,000	56	812,719	+10,067,281	23.83		1.78
Wyoming	4	120,000	200,000	320,000	37	50,266	+ 269,734	8.49		1.33
Yates	4	120,000	200,000	320,000	20	23,331	+ 296,669	16.13		1.17
Sub Total	654	$19,620,000	$32,700,000	$52,470,000	2,135	$6,051,303	$+46,418,697	$10.08		$1.16
Nassau	216	6,480,000	10,800,000	17,280,000	88	194,113	+17,085,887	11.95		.13
Suffolk	76	2,280,000	3,800,000	6,080,000	45	419,494	+ 5,660,506	5.39		.37
Sub Total	292	8,760,000	14,600,000	23,360,000	133	613,607	+22,746,393	11.79		.30
TOTAL	946	28,380,000	47,300,000	75,830,000	2,268	6,664,910	+69,165,090	10.55		.92

[2] Based on Corrission recommendation that there should be 1 Justice for 2,000 cases, computed form 1973 actual caseload under Justice Court System.

B-5

Comparative Cost Analysis of the Recommendations of the Temporary Commission on the New York State Court System and the Present Justice Court System, "Mandated District Court Counties"

County	Proposed Number of Justices Based on 1973 Caseload[3]	Proposed Justices Salaries ($30,000 per Annum)	Proposed Support Staff Per Justice ($ Staff Members at $6,250 per Annum, or $50,000 Expenditures	Total Proposed Personal Services Expense	1973 Number of Town and Village Justices	1973 Town and Village Justice and Support Staff Expenditures	Comparison of Commission Recommendation with Expense of Current Justice System Increase (+) Decrease (-)	Comparison of Commission Recommendation with Expense of Current Justice System -per Capita Cost- Commission	Current System
Albany	15	$ 450,000	$ 750,000	$1,200,000	25	$139,230	$+1,060,770	$8.57	$ .99
Broome	19	570,000	950,000	1,520,000	38	145,822	+1,374,178	9.63	.92
Chautauqua	11	330,000	550,000	880,000	58	120,246	+ 759,754	9.70	1.32
Dutchess	16	480,000	800,000	1,280,000	48	175,310	+1,104,690	7.23	.99
Erie	48	1,440,000	2,400,000	3,840,000	63	586,609	+3,253,391	6.39	.97
Monroe	24	720,000	1,200,000	1,920,000	42	280,168	+1,639,832	4.60	.67
Nassau	216	6,480,000	10,800,000	17,280,000	88	194,113	+17,085,887	11.95	.13
Niagara	9	270,000	450,000	720,000	25	120,045	+ 599,955	6.11	1.35
Oneida	12	360,000	600,000	960,000	64	127,997	+ 832,003	7.31	.97
Onondaga	28	840,000	1,400,000	2,240,000	50	247,186	+1,992,814	8.12	.89
Orange	27	810,000	1,350,000	2,160,000	51	226,497	+1,933,503	13.17	1.38
Rensselaer	8	240,000	400,000	640,000	30	86,714	+ 553,286	8.05	1.09
Rockland	28	840,000	1,400,000	2,240,000	21	190,494	+2,049,506	9.74	.82
Schenectady	6	180,000	300,000	480,000	11	55,114	+ 424,886	5.77	.66
Suffolk	76	2,280,000	3,800,000	6,080,000	45	419,494	+5,660,506	5.39	.37
Westchester	136	4,080,000	6,800,000	10,880,000	56	812,719	+10,067,281	23.83	1.78
Sub Total	679	20,370,000	33,950,000	54,320,000	715	3,927,758	+50,392,242	7.56	.54

[3] Based on Commission recommendation that there should be 1 Justice for 2,000 cases, computed from 1973 actual caseload under Justice Court system.

CONTINUED

Comparative Cost Analysis of the Recommendations of the Temporary Commission on the New York State Court System and the Present Justice Court System, "Proposed Town Justice Court Counties"

County	Proposed Number of Justices Based on 1973 Caseload[4]	Total Proposed Personal Services Expense[5]	1973 Number of Town and Village Justices	1973 Town and Village Justice and Support Staff Expenditures	Comparison of Commission Recommendation with Expense of Current Justice System Increase (+) Decrease (-)	Comparison of Commission Recommendation with Expense of Current Justice System -per Capita Cost- Commission	Current System
Allegany	28	$45,152	67	$ 58,481	$-13,329	$ .97	$1.25
Cattaraugus	31	67,591	71	77,991	-10,400	1.23	1.42
Cayuga	23	57,812	54	64,008	- 6,196	1.34	1.49
Chemung	11	58,963	27	71,403	-12,440	.95	1.15
Chenango	22	36,973	50	43,314	- 6,341	.98	1.15
Clinton	16	53,119	35	56,218	- 3,099	.97	1.03
Columbia	18	73,471	38	76,221	- 2,750	1.72	1.79
Cortland	15	30,404	33	33,614	- 3,210	1.15	1.27
Delaware	19	48,921	41	96,280	- 7,359	1.09	1.25
Essex	18	97,589	37	100,064	- 2,475	2.81	2.88
Franklin	19	60,412	41	78,949	-18,537	1.37	1.79
Fulton	10	28,209	22	29,709	- 1,500	1.23	1.29
Genesee	[redacted]	67,091	30	72,906	- 5,815	1.62	1.76
Greene	14	47,775	32	57,606	- 9,831	1.44	1.73
Hamilton	9	27,420	19	28,320	- 900	5.81	6.00
Herkimer	18	56,222	43	70,221	-13,999	.93	1.17
Jefferson	22	74,855	56	87,127	-12,272	1.29	1.50
Lewis	17	26,089	40	31,274	- 5,185	1.10	1.32
Livingston	17	58,022	41	76,922	-18,900	1.07	1.42
Madison	15	54,119	39	65,736	-11,617	1.05	1.28
Montgomery	10	33,604	20	33,604	0	1.10	1.10
Ontario	16	67,259	36	70,330	- 3,071	1.30	1.36
Orleans	10	32,614	22	47,212	-14,598	.87	1.26
Oswego	22	73,837	45	76,343	- 2,506	1.11	1.15
Otsego	24	48,749	52	51,888	- 3,139	1.21	1.29
Putnam	6	114,436	15	119,171	- 4,735	2.54	2.10
St. Lawrence	32	118,549	72	144,513	-25,964	1.21	1.48
Saratoga	19	92,300	42	101,090	- 8,700	.95	1.04
Schoharie	16	29,249	36	34,599	- 5,350	1.18	1.39
Schuyler	8	20,495	19	25,406	- 4,911	1.22	1.51

CONTINUED

Comparative Cost Analysis of the Recommendations of the Temporary Commission on the New York State Court System and the Present Justice Court System, "Proposed Town Justice Court Counties"

Seneca	10	$ 33,468	22	$ 49,137	$-15,669	$ .95	$1.40
Steuben	32	80,806	73	102,046	-15,240	1.21	1.42
Sullivan	15	88,353	35	104,786	-16,433	1.68	1.99
Tioga	9	31,370	23	43,704	-12,394	.67	.94
Tompkins	10	38,869	24	47,774	- 8,905	.76	.93
Ulster	20	148,516	43	157,543	- 9,027	1.28	1.36
Warren	11	62,772	23	68,085	- 5,313	1.95	2.11
Washington	17	38,889	41	56,252	-17,363	.73	1.06
Wayne	15	92,094	37	93,648	- 1,554	1.15	1.17
Wyoming	16	38,672	37	50,266	-11,594	1.02	1.33
Yates	9	19,300	20	23,331	- 4,031	.97	1.17
Sub Total	682	$2,554,200	1,553	$2,737,152	$-182,952	$2.03	$1.90
TOTAL	1,351	$59,874,200	2,268	$6,664,910	$+50,209,290	$6.98	$ .92

4. Based on Commission recommendation that each Town elect 1 Justice, rather than the 2 currently authorized; that the Village Justice Courts be discontinued; and, the number of Town Justices serving during the 1973 calendar year.

5. Based on Commission recommendation that judicial costs remain at the discretion of the Towns; that each Town would, to compensate the Town Justices for the assumption of approximate 473,408 cases handled by the Village Courts in addition to the approximate 831,606 handled by them for the 1973 calendar year, provide each Town Justice (1) with a clerk at one-half of the salary paid, the discontinued Town Justice post and (2) increase the single Justice's salary by the other half of the salary formerly paid, in recognition of increased workload; that Villages would not compensate Towns for cases arising in villages.

B-8

Number of Lawyer and Nonlawyer Town and Village Justices in New York State During the Calendar Year 1974, By County [6]

County	Number of Town Lawyer Justices	Number of Town Nonlawyer Justices	Number of Village Lawyer Justices	Number of Village Nonlawyer Justices
Albany	5	16	2	4
Allegany	1	55	1	15
Broome	3	29	4	6
Cattaraugus	2	60	1	13
Cayuga	0	46	0	10
Chautauqua	5	49	1	7
Chemung	5	17	3	4
Chenango	2	41	1	8
Clinton	0	31	0	5
Columbia	1	34	0	4
Cortland	0	30	0	5
Delaware	3	34	2	6
Dutchess	10	30	4	8
Erie	22	28	16	8
Essex	1	35	0	1
Franklin	0	37	0	7
Fulton	0	20	0	3
Genesee	0	26	0	4
Greene	0	27	0	6
Hamilton	0	18	0	2
Herkimer	0	36	2	8
Jefferson	0	44	1	13
Lewis	0	34	0	10
Livingston	1	33	1	9
Madison	3	27	2	10
Monroe	12	27	5	1
Montgomery	0	20	0	0
Niagara	0	24	0	1
Oneida	1	52	4	14
Onondaga	12	27	5	8
Ontario	0	32	0	3

B-9

Number of Lawyer and Nonlawyer Town and Village Justices in New York State During the Calendar Year 1974, By County

Orange	10	30	6	11
Orleans	0	20	2	2
Oswego	0	43	0	1
Otsego	1	47	0	5
Putnam	7	5	1	3
Rensselaer	4	22	1	5
Rockland	8	1	15	2
St. Lawrence	5	39	6	2
Saratoga	4	37	2	4
Schenectady	2	8	1	1
Schoharie	0	31	0	5
Schuyler	0	16	0	4
Seneca	1	18	2	3
Steuben	1	62	2	15
Sullivan	4	26	2	7
Tioga	0	18	1	5
Tompkins	0	19	1	5
Ulster	4	36	1	4
Warren	3	19	0	1
Washington	0	34	1	10
Wayne	4	26	4	8
Westchester	34	2	33	1
Wyoming	1	31	1	8
Yates	0	18	0	5
Sub Total	179	1,647	134	320
Nassau	0	0	85	3
Suffolk	2	10	30	3
Sub Total	2	10	115	6
Total	181	1,657	249	326

[6] Attorney Town and Village Justices in New York State as of 10/26/74 and Town and Village Justices in New York State as of 10/24/74 computer printout, New York State Office of Court Administration, New York, New York. These printouts contain some duplicate references to lawyer justices which were not removed prior to the compilation of this table.

APPENDIX

APPENDIX C

Survey of States Employing Nonlawyer Justices — Training Programs

States With Mandatory Training Programs

Delaware
Florida
Idaho
Iowa
Mississippi
Montana
New Mexico
New York
North Carolina
North Dakota[1]
Pennsylvania
Texas
Utah
Washington
West Virginia[2]
Wyoming

States With Voluntary Training Programs

Alaska
Georgia[3]
Kansas
Louisiana
Missouri
Nevada
New Hampshire
Oregon
South Carolina
Tennessee[4]
Vermont
Wisconsin[5]

States With No Training Programs

Arizona
Arkansas
Kentucky

---

[1]One-half to two-thirds of communities in state have fewer than 100 people and no attorneys.

[2]Effective January 1, 1976.

[3]New course in planning stage; many districts without attorneys.

[4]A number of counties without lawyers.

[5]No power to incarcerate; fines only.

Nonlawyer Training Program Survey

Alaska

Source: Juneau District Court Judge William and Juneau Magistrate Richard Siangco

Magistrates courts conduct preliminary hearings and have jurisdiction over misdemeanors and traffic violations. Nonlawyer magistrates are not required by law to receive training, but the Alaska Supreme Court and Alaska Courts Administrator supervise a comprehensive training program. Incoming nonlawyer judges take a two week seminar at the National College of Judicature at Boulder, Colorado. Various seminars and two judicial conferences are also given throughout the year. Every three years the magistrates must attend another four week session, in addition to the seminars given each year. Magistrates are under the direct supervision of district court lawyer judges. In many local jurisdictions there are no attorneys.

Arizona

Source: Mike Sophy, Special Assistant Attorney General, Phoenix

Justices of the peace preside over preliminary hearings, misdemeanors and traffic infractions. Arizona is one of only three states which do not require their nonlawyer judges to be trained. There apparently exists a strong attitude in the state legislature that laymen make good justices of the peace. However, there is an annual series of seminars given at the major colleges and universities throughout the state which many of the state's 51 nonlawyer judges attend.

Nonlawyer Training Program Survey

Arkansas

Source: C. R. Huie, State Court Administrator, Littlerock

Arkansas is also one of the three states requiring no training for their nonlawyer judges. In Arkansas, however, nonlawyers preside only as justices of the peace (20 judges) and, in smaller communities, city court judges (83 judges). These courts have jurisdiction over preliminary hearings, misdemeanors and traffic infractions. However, the state's municipal courts have countywide jurisdiction and hear 90% of the preliminary hearings, misdemeanors and traffic cases. All municipal court judges are lawyers. In many sparsely populated communities with nonlawyer judges there are few, if any, lawyers.

Delaware

Source: Ms. Sharon Cooper, Secretary to James Horgan, Deputy Administrator to the Chief Justice, Wilmington

Only justices of the peace may be nonlawyers. They are appointed by the governor with the approval of the state senate. Applicants are screened and tested. New judges are given an intensive two-week training program. They receive a weekly newsletter explaining new laws and decisions. Further, they must attend one seminar each month. Of 51 justices of the peace, 50 are nonlawyers, and they have jurisdiction over matters which potentially involve incarceration.

Florida

Source: Frank Habershaw, Deputy State Court Administrator, Tallahassee

Nonlawyers may preside as county judges only in counties having a population of less than forty thousand (27 counties).

Their jurisdiction includes the power to incarcerate. Although not required by law, a nonlawyer judge training program is administered by the Chief Justice of the Florida Supreme Court. Nonlawyer judges must spend four weeks in each of three successive summers at the University of Florida taking daily classes from 8:00 a.m. to 5:00 p.m. During the remainder of the year, the nonlawyer judges must spend four days per month in classes at the university.

Georgia

Source: Christopher Perrin, Office of Court Administration, Atlanta

Judges in probate courts, mayor and city courts, and justices of the peace need not be lawyers. They have varying jurisdiction, but each has the power to incarcerate. It is estimated that 80% of the 159 probate court judges, 95% of the more than 1,000 justices of the peace, and many of the mayor and city court judges are nonlawyers. The Office of Court Administration is relatively new and the Georgia court system is in the process of being centralized. Although there is no training program required by law, the probate court judges have an annual three-day seminar attended by most probate judges. The judges of the peace sponsor local seminars. There is apparently no present training program for the mayor and city court judges. However, the Office of Court Administration is implementing a new training program for all incoming judges. In many jurisdictions there are no attorneys available for these judgeships, particularly the justice of the peace courts.

Idaho

Source: Richard Hammond, Office of Court Administration, Boise

In Idaho, nonlawyer magistrates may hear only offenses (including traffic) which involve potential incarceration of six months or less. Only attorney magistrates or district court judges may hear misdemeanor cases involving potential sentences of greater than six months. After appointment by the Magistrates Commission, all magistrates must attend the basic two-week training program at the National College of State Judiciary in Reno, Nevada. Most of the nonlawyer judges then voluntarily attend an annual four-week course during the summer. Twenty-five of the seventy magistrates are nonlawyers and most of the lawyer magistrates have predominantly civil practice backgrounds.

Indiana

Source: Stephen Daniels, Executive Secretary of the Judicial Study Commission, Indianapolis

In *In re Judicial Interpretation of 1975 Senate Enrolled Act No. 441*, Ind. , N.E. 2d (August 1, 1975), the Indiana Supreme Court held that nonlawyer judges may not preside over criminal cases. Prior to that advisory opinion in which the Court examined recent legislation revamping the Indiana court system, except for a test given to all incoming judges there was no training for Indiana's nonlawyer judges. In any event, nonlawyer judges consisted solely of justices of the peace who did not possess the power to incarcerate. Under the new legislation, effective January 1, 1976, county courts will hear all petty criminal offenses and justices of the peace will only preside over civil matters.

Nonlawyer Training Program Survey

Iowa

Source: Jerry Beatty, Office of Court Administration, Des Moines

Nonlawyer district court judges may hear traffic cases and nonindictable misdemeanors. They are statutorily required to attend an annual three-day training course. A fall program dealing with traffic court violations is also offered and attended by a large majority of the nonlawyer judges.

Kansas

Source: James L. James, Judicial Administrator for the Courts of Kansas, Topeka

Probate, juvenile, magistrate, and municipal court judges need not be lawyers. They hear traffic and ordinance violations and may incarcerate. Although it is not mandatory, the state's annual two and three-day conferences are regularly attended by 100% of the nonlawyer judges.

Louisiana

Source: J. J. McKenzie, Assistant Attorney General, Baton Rouge

The attorney general's office presents a voluntary and highly effective annual three-day training course for all nonlawyer judges. The nonlawyer judges preside in justice of the peace courts and have the power to incarcerate.

Nonlawyer Training Program Survey

Mississippi

Source: Benjamin H. Walley, Assistant Attorney General, Jackson

A statutorily mandated training course is given every year for the state's nonlawyer judges. The nonlawyer judges are justices of the peace with the power to incarcerate. They must attend the annual three-day training course.

Missouri

Source: Kenneth Dean, Office of Court Administration, Jefferson City

Missouri's nonlawyer judges, who are municipal court judges, may hear only ordinance violations, but have the power to incarcerate. They must attend five one-day training sessions every other year. The program is generally considered very effective.

Montana

Source: Thomas Honzel, Training Coordinator for Montana County Attorneys Association, Helena

A statutorily required week-long training program is given to all of Montana's justices of the peace and municipal court judges. Those courts have jurisdiction over misdemeanors and traffic violations and may incarcerate upon conviction. In addition to the madatory training course, nonlawyer judges voluntarily attend two week-long courses conducted by the Law Enforcement Academy.

Nevada

Source: James Hancok, Library Assistant, North College of State Judiciary, Reno

Justices of the peace are Nevada's only nonlawyer judges and they voluntarily attend two weeks of seminars and conferences every year at the National Training Center for Justices in Reno. These justices have the power to incarcerate.

New Hampshire

Source: George Pappagianis, Supreme Court Clerk, Concord

Probate, municipal and district courts in New Hampshire have the power to incarcerate. Many of these judges are nonlawyers who voluntarily attend periodic conferences and seminars held at the University of New Hampshire.

New Mexico

Source: Larry D. Coughenour, Director of Administrative Office of the Courts, Santa Fe

In addition to a mandatory annual training program, probate, magistrate and municipal court judges also attend conferences and seminars given by the American Academy and the National Training Center for Justices in Reno, Nevada. Probate and magistrate courts have jurisdiction over criminal matters and municipal courts (towns, cities and villages) have jurisdiction over traffic violations.

North Carolina

Source: Dallas Cameron, Training Director, Raleigh

District court judges need not be lawyers. Those courts have criminal jurisdiction and have the power to incarcerate.

Nonlawyer district court judges must, as of September 1, 1975, receive a minimum of forty hours of training and may also be required by the senior resident superior court judge to receive an on-the-job training session of up to three months.

North Dakota

Source: Theodore Gladden, Assistant State Court Administrator, Bismarck

Effective July 1, 1975, a statutorily required training program is administered to all nonlawyer municipal court judges who have authority to incarcerate. Three-day seminars are supplemented by an out-of-state program coordinated with the National College of the State Judiciary in Reno, Nevada. Of the 210 municipal judges, 193 are nonlawyers. In one-half to two-thirds of the municipalities in North Dakota, there reside fewer than 100 people and usually no lawyers.

Oregon

Source: Thomas H. Denney, Assistant Attorney General, Salem

Justices of the peace, who possess the power to incarcerate, need not be lawyers. A non-mandatory training program is made available which includes both in and out-of-state seminars.

Pennsylvania

Source: Jonathan Vipand, Counsel to Court Administrator, Philadelphia

State law requires nonlawyer justices of the peace to take a two-week training course at a state college. Virtually all jurisdictions of the justice of the peace courts in Pennsylvania have nonlawyer judges. In addition to the mandatory training

program, the Pennsylvania Supreme Court, pursuant to its supervisory powers, requires attendance of all nonlawyer justices at seminars given throughout the year. These seminars cover a wide range of criminal law matters and last three to five days.

South Carolina

Source: William A. Dallis, Director of Court Administrative Office, Columbia

Magistrate or municipal court judges need not be lawyers. Several voluntary training sessions two to three days in length are held each year throughout the state. In criminal cases the nonlawyer judges may hear only petty misdemeanors involving a maximum 30-day jail term, or lesser infractions.

Tennessee

Source: Rob Littleton, Assistant Attorney General, Nashville

General sessions courts conduct preliminary hearings and try misdemeanor and lesser criminal charges, and the judges of those courts (formerly justice of the peace courts) need not be lawyers. Probate and juvenile court judges need not be lawyers. Although state law does not require a training program, these nonlawyer judges attend an annual week-long seminar. In many counties in Tennessee, there are no lawyers and these judges must of necessity be nonlawyers.

Texas

Source: Maurice Pitkin, Executive Director, Judicial Qualifications Commission of Texas, Austin

Texas' 900 justices of the peace, need not be lawyers and they handle misdemeanor and lesser criminal offenses. Some county

judges are also nonlawyers. State law requires a continuous training program for these nonlawyer judges, which includes lectures, mock courts and workshops dealing with all phases of their work.

Utah

Source: Earl F. Dorius, Assistant Attorney General, Salt Lake City

Utah's justices of the peace, who have criminal jurisdiction, are required to attend two conferences each year which include workshops, lectures, course materials, and sanctions for nonattendance. Further, more frequent regional workshops are held to update the content of the regular conferences.

Vermont

Source: Lawrence J. Turgeon, Court Administrator, Montpelier

Only probate judges in Vermont may be nonlawyers and they have no criminal jurisdiction. Nonetheless, they are given frequent out-of-state seminars at institutions like the American Academy.

Washington

Source: Constance Bowers, Education and Information Specialist, Office of Administrator for the Courts, Olympia

Justice of the peace courts and municipal courts have jurisdiction over criminal matters. Judges of those courts need not be lawyers. However, the Washington State Criminal Justice Training Commission requires all nonlawyer judges to attend a five-day training program.

Nonlawyer Training Program Survey

West Virginia

Source: Forest J. Bowman, Administrative Director of the Supreme Court of Appeals, Charleston

Justices of the peace and judges of the magistrates courts have the power to incarcerate. A recent amendment to West Virginia law requires a comprehensive training program to be implemented for all nonlawyer judges by January 1, 1976.

Wisconsin

Source: Charles Wheeler, Assistant Director of Education, Judicial Education Center, Madison

Municipal court judges need not be lawyers. Those courts may incarcerate criminal defendants only for failure to pay a fine. Two-thirds of the approximately 225 municipal court judges are nonlawyers. A voluntary training program has been initiated by the education department and, while being expanded, now includes two annual conferences and course materials.

Wyoming

Source: Hon. J. Reuel Armstrong, Court Coordinator, Cheyenne

Justices of the peace preside over criminal matters with a maximum of three months of incarceration. Sixteen of the state's 39 justices of the peace are nonlawyers. Although justices of the peace must be lawyers, if none are available to serve, the county commissioner appoints a nonlawyer. Municipal courts have jurisdiction over ordinance violations and may incarcerate for a maximum of three months. Thirty-nine of the state's 59 municipal court judges are nonlawyers. Municipal court judges are appointed and must be lawyers. However, nonlawyers are appointed when lawyers, for various reasons, are unavailable. These judges must attend five-day training programs every six months.